No. 80-979

In the Supreme Court of the United States

OCTOBER TERM, 1980

THE COMMONWEALTH OF PUERTO RICO AND THE ENVIRONMENTAL QUALITY BOARD OF THE COMMONWEALTH OF PUERTO RICO,
PETITIONERS,

v.

THE S.S. ZOE COLOCOTRONI, MARBONANZA COMPANIA NAVIERA, S.A., COLOCOTRONI LTD., COLOCOTRONI BROTHERS, S.A., THE WEST OF ENGLAND SHIP OWNERS MUTUAL PROTECTION AND INDEMNITY ASSOCIATION (LUXEMBOURG) AND THE WEST OF ENGLAND SHIP OWNERS MUTUAL INSURANCE ASSOCIATION (LONDON) LIMITED,
RESPONDENTS.

ON CROSS-PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

REPLY BRIEF

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Argument

I. DEFENDANTS' BRIEF IN OPPOSITION FAILS TO ADDRESS THE QUESTION PRESENTED FOR REVIEW.

Succinctly stated, the question presented to the court by the plaintiffs is whether under the pertinent statutes and applicable law they have a right to recover the total value of the damages caused to its natural resources by the ZOE COLOCOTRONI

oil spill. Defendants, rather than addressing this issue in the Brief in Opposition, have dedicated six of their eight pages to distort the evidence that was presented to the trial court. Defendants do not deny, nor could they, that the question presented for review involves an important question of Federal law which has not been, but should be, settled by this Court.

In essence, defendants' arguments in opposition to plaintiffs' cross-petition appear to be that the merit of the question presented for review notwithstanding the petition for a writ of certiorari should not be granted because they would allegedly prevail on a remand on the contested questions of fact. This is, to say the least, pure speculation.[1]

On page 8 of their brief in opposition, after having presented a distorted picture of the evidence to the court and having argued their case in the manner less favorable to plaintiffs' case, defendants finally submit that, "the evidence in the record could only support a finding that a few hundred marine organisms, mostly fiddler crabs and marine worms, were killed by the oil spill".[2]

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[1] Defendants presented the same distorted picture of the evidence properly in the record when they filed their Rule 60(b) motion before the District Court. The order of the court dated August 8, 1979, denying their motion, clearly shows that defendants' attack on plaintiffs' trial evidence is totally unsupported and without merit. Said order is reproduced as Appendix A to plaintiffs' Cross-Petition, pp. 22 through 27. Thus, contrary to defendants' fictional narration of the evidence, it is patently clear that the record amply supports the District Court's findings as to the number of marine animals destroyed and the replacement cost of the same.

[2] Defendants, in their petition for a writ of certiorari in Case No. 80-758, pp. 2, 3, had also candidly admitted that "it is undisputed that mangrove trees and marine organisms were killed by the oil spill".

Assuming arguendo that only a few hundred animals were destroyed and not the 92,109,720 animals which the District Court found, after six weeks of trial, the oil had destroyed, and, assuming arguendo that only marine worms and fiddler crabs were destroyed by oil, not fish larva, shrimps, crabs, lobsters, conch, snails, oysters and others as the District Court found were destroyed, one question still remains unanswered. Whether Puerto Rico and the coastal states are entitled to the replacement costs of these animals. This is the question that the plaintiffs are seeking to have reviewed by the court.

Conclusion

For the foregoing reasons, and for the reasons set forth in plaintiffs' cross-petition for a writ of certiorari, plaintiffs respectfully submit that their petition should be granted.

Respectfully submitted,

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